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10/575,604	04/13/2006	Sopragasen Naidoo	14638.0006USWO	1634
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EXAMINER				
COURSON, TANIA C				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/575,604

**Applicant(s)**

NAIDOO, SOPRAGASEN

**Examiner**

TANIA C. COURSON

**Art Unit**

2841

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 13, 15, 17-19, 22-24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13, 15, 17-19, 22-24 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 17 is objected to because of the following informalities: it has an improper dependency since it states in line 1, that it remains dependent on cancelled claim 11. For examination purposes, the examiner has assumed that it is dependent on claim 1. Appropriate correction is required.
2. Claim 26 is objected to because of the following informalities: it has an improper dependency since it states in line 1, that it remains dependent on cancelled claim 21. For examination purposes, the examiner has assumed that it is dependent on claim 19. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5, 7, 13, 15, 18-19 and 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Donoho (US 2004/0255837 A1).

Donoho discloses in Figures 1-3, a bird deterrent comprising:

With respect to claims 1-5, 7, 13, 15 and 18:

- a) a clamping means (30) for clamping the device on the overhead cable (2), the clamping means including a first member (54) having a hook portion for hooking over the overhead cable (Fig. 3); and a second member (62) to engage with the overhead cable when said cable is in the hook portion thereby to cause the clamping means to be locked to the overhead cable (Fig. 2 and paragraph 20 & 22), an actuation mechanism (paragraph 20) to cause the second member to move from an un-actuated condition in which it is restrained from travel towards the hook portion to an actuated condition in which it recoils towards the hook portion through the release energy stored in a spring (paragraph 22), thereby to engage with the overhead cable (Fig. 2); and a securing mechanism (46) to keep the second member in the actuated condition (Fig. 2) and at least one vane set (10) rotatably attached to the clamping means (Fig. 3),
- b) wherein the vane set is fluorescent thereby to increase the visibility of the vanes to the birds (paragraph 16);
- c) wherein the vanes of the vane set are alternatingly coloured with a first colour and a second colour thereby to be visible to the birds both by day and by night (paragraph 16);
- d) wherein the vane set is reflective (paragraph 16);
- e) wherein the vanes are configured to rotate in response to the wind (Fig. 3);

- f) wherein the vanes are rotatably attached to the clamping means by a suspension means (32);
- g) wherein the first member is substantially C-shaped (Fig. 2);
- h) wherein the upper section of the C-shape is the hook portion for hooking over the overhead cable (Fig. 3);
- i) wherein the securing mechanism includes a ratchet (46) to keep the second member in the actuated condition (Fig. 2 and paragraph 20 & 22).

With respect to claims 19 and 22-24:

- a) a first member (54) having a hook portion for hooking over the overhead cable (2); a second member (62) to engage with the overhead cable when said cable is in the hook portion thereby to cause the clamping means to be locked to the overhead cable (Fig.2 and paragraph 20 & 22), an actuation mechanism (paragraph 20) to cause the second member to move from an un-actuated condition in which it is restrained from travel towards the hook portion to an actuated condition in which it recoils towards the hook portion through the release energy stored in a spring (paragraph 22), thereby to engage with the overhead cable (Fig. 2); and a securing mechanism (46) to keep the second member in the actuated condition (Fig. 2);
- b) wherein the first member is substantially C-shaped (Fig. 2);
- c) wherein the lower section of the C-shape is configured to house the second member when in the un-actuated condition (Fig. 2 and paragraph 20 & 22);

- d) wherein the upper section of the C-shape is the hook portion for hooking over the overhead cable (Fig. 2).

With respect to the preamble of the claim 1: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 ( CCPA 1951).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Donoho in view of Richter (US 5,058,335).

Donoho discloses a bird deterrent, as stated above in paragraph 4.

Donoho does not disclose vanes/deterrent set configured to rotate in response to vibrations from an overhead cable.

Richter teaches an anti-bird device that consists of vanes/deterrent set configured to rotate in response to vibrations from a power line (column 3, lines 25-42). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the bird deterrent of Donoho, so as to include vanes/deterrent set configured to rotate in response to vibrations from an overhead cable, as taught by Richter, in order to increase the movement capabilities of the deterrent device.

7. Claims 17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donoho in view of Takashi et al. (JP-2002-176901).

Donoho discloses a bird deterrent with an actuation mechanism (Fig. 2 and paragraph 20 & 22), as stated above in paragraph 4.

Donoho does not disclose configured to be operated remotely.

Takashi et al. teaches an inhibiting bird device that consists of configured to be operated remotely (B). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the bird deterrent of Donoho, so as to include remote activation, as taught by Takashi et al., in order to increase accessibility to the movement capabilities of the deterrent device.

8. Claims 19 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan (US 2,768,664) in view of Donoho.

Morgan discloses a clamping device having the following:

- a) a first member (11) having a hook portion for hooking over an object (Fig. 1);  
a second member (16) to engage with the object when said object is in the hook portion thereby to cause the clamping means to be locked to the object (Fig. 1), an actuation mechanism (26) to cause the second member to move from an un-actuated condition in which it is restrained from travel towards the hook portion to an actuated condition in which it recoils towards the hook portion through the release energy stored in a spring (27), thereby to engage with the object (Fig. 1); and a securing mechanism (22) to keep the second member in the actuated condition (Fig. 1);
- b) wherein the first member is substantially C-shaped (Fig. 1);
- c) wherein the lower section of the C-shape is configured to house the second member when in the un-actuated condition (Fig. 1);
- d) wherein the upper section of the C-shape is the hook portion for hooking over the object (Fig. 1).

Morgan **does not disclose:** an overhead cable

Donoho teaches a bird deterrent clamping device that consists of having an overhead cable (2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the clamping device of Morgan, so as to include an overhead cable, as taught by Donoho, in order to increase utility of the device by using it on overhead objects.



9. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan and Donoho in view of Takashi et al..

Morgan and Donoho disclose a clamping device, as stated above in paragraph 8.

Morgan and Donoho do not disclose configured to be operated remotely.

Takashi et al. teaches an inhibiting bird device that consists of configured to be operated remotely (B). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the clamping device of Morgan and Donoho, so as to include remote activation, as taught by Takashi et al., in order to increase accessibility to the movement capabilities of the clamping device.

#### ***Response to Arguments***

10. Applicant's arguments filed on 18 September 2009 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose related structures or features thereof.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239. The examiner can normally be reached on Monday-Friday from 7:30AM to 2PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jinhee Lee, can be reached on (571) 272-1977.

The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/R. A. Smith/  
Primary Examiner, Art Unit 2841

TCC  
December 31, 2009